

Legislative Notice

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Revised

S. 534 — Interstate Transportation of Municipal Solid Waste Act of 1995

Calendar No. 74

Reported from the Committee on Environment and Public Works on April 18, 1995, with an amendment in the nature of a substitute, by a roll call vote of 16 to 0. A hearing was held on March 1, 1995. S. Rept. 104-52. Additional Views filed.

NOTEWORTHY

- By unanimous consent, the Senate will proceed to consideration of S. 534 at noon today.
- The legislation allows every governor to freeze current municipal solid waste (MSW) imports at 1993 import levels, and to ban future MSW imports to facilities not receiving such waste in 1993, if the affected local community does not want to receive out-of-state MSW.
- The legislation also provides limited authority to states and political subdivisions to direct municipal solid waste to solid waste management facilities.
- Finally, S. 534 reinstates the groundwater monitoring exemption for small municipal landfills that had been provided in an October 1991 final rule by the Environmental Protection Agency that was reversed by the U.S. Court of Appeals for the District of Columbia Circuit pursuant to a Sierra Club lawsuit.
- Title I of S. 534, which deals with interstate waste, is similar to S. 2345 from the 103d Congress. Last year's bill passed the Senate by voice vote on September 30, 1994. A similar bill, H.R. 4683, to which a flow control title was added, passed the House in 1994, but was not reconciled with the Senate bill prior to *sine die* adjournment.
- Amendments are expected on both interstate waste and flow control.

BILL SUMMARY

The issue of increasing recipient states' control over out-of-state municipal waste has been raised by Senator Coats since 1989. Versions of interstate municipal waste control legislation passed the Senate in 1992 and in 1994. The House also passed an interstate waste bill (H.R. 4683) in 1994, but it was not considered by the full Senate. This legislation is necessary in the face of a string of Supreme Court cases that have consistently declared attempts by states to restrict the import of wastes generated outside those states as a violation of the Commerce Clause of the U.S. Constitution. However, the Supreme Court has made it clear that the exclusive federal right to regulate interstate commerce resides in the Congress.

This bill provides three authorizations: Title I extends to states the right to restrict imports of out-of-state municipal waste; Title II grants federal authority for states' efforts to direct the flow of municipal waste to designated solid waste facilities; and Title III reinstates the groundwater monitoring exemption for small landfills.

Title I — Interstate Municipal Waste Restrictions

Title I provides legal authority to every state to restrict imports of out-of-state municipal solid waste ("garbage" or "trash"). This authority does not apply to interstate shipments of hazardous waste, industrial waste, or construction and demolition debris.

- The governor of any state may freeze current MSW imports at 1993 levels sent to landfills and incinerators that meet applicable federal and state standards.
- The governor of any state may ban future MSW imports to landfills and incinerators that did not receive out-of-state waste in 1993 if the affected local community does not want to receive that out-of-state MSW, or if the facility does not meet applicable federal and state standards.
- A governor may unilaterally ban out-of-state MSW, for any state exporting more than 3.5 million tons of MSW in 1996, 3.0 Million tons in 1997 and 1998, 2.5 million tons in 1999 and 2000, 1.5 million tons in 2001 and 2002, and 1 million tons of MSW in 2003 and every year thereafter. Currently, only New York state would trigger this ban.
- A governor may unilaterally restrict out-of-state MSW, imported from any single state that exceeds a decreasing series of waste levels from a maximum in 1996 of 1.4 million tons or 90 percent of the 1993 levels of such waste exported to such state, whichever is greater, to a 2002 maximum of 600,000 tons.
- States are authorized to continue to impose differential fees of no more than \$1 per ton

on out-of-state MSW if the state had imposed that fee on or before April 3, 1994, and the proceeds are dedicated to fund solid waste management programs administered by the state.

- Finally, governors may **ban or limit** MSW imported from Canada (and other countries) if doing so is found by the President to be consistent with the U.S. international trade obligations under GATT and NAFTA.
- However, governors may **not ban or limit** MSW imports to landfills or incinerators that have a "host community agreement" that specifically authorizes the receipt of out-of-state MSW.

Title II — Solid Waste Flow Control

Each state and political subdivision is granted the authority to control and direct the movement of municipal solid waste or voluntarily relinquished recyclable material to a designated waste management facility or facility for recyclable material if:

- 1) the state or political subdivision imposed a flow control law or ordinance prior to May 15, 1994 [the date of the Supreme Court decision that struck down a local flow control ordinance as a violation of the Interstate Commerce clause, *C&A Carbone, Inc. v. Town of Clarkstown, New York*] which directed flows to or included a contract with either a particular waste management facility or a public service authority; and
- 2) the directed flows of waste are limited to the types of waste actually controlled by the state or political subdivision on or before May 15, 1994, or volumes contracted for on that date.

The flow control authority expires on the later of three dates: when the capital costs of the waste management facility are met; when the contract for delivery of waste expires; or when the facility is at the end of its useful life.

All grants of flow control authority are provided for no more than 30 years after the date of enactment of this legislation.

Title III — Groundwater Monitoring Exemption Reinstated

Section 301 reinstates the groundwater monitoring exemption for certain small landfills that had been contained in EPA's municipal solid waste landfill criteria rule, promulgated in 1991. The EPA rule was vacated by the U.S. Court of Appeals of the District of Columbia Circuit, in a lawsuit brought by the Sierra Club and the Natural Resources Defense Council. Eligible landfills must accept less than 20 tons of waste per day, exhibit no evidence of

groundwater contamination, receive 25 inches of precipitation or less per year, and serve a community that has no practicable waste management alternative or that experiences annual interruptions in surface transportation preventing access to a regional waste management facility.

OTHER VIEWS

The EPW Committee's Ranking Democrat, Senator Baucus, filed additional views indicating that while he supports the legislation, he reserves the right to amend the bill on the floor to empower states and communities to decide whether to accept out-of-state-waste before such waste is imported.

Senators Lautenberg, Graham, and Boxer also filed additional views stating their concern for the "inconsistent" way the legislation gives Governors the power to restrict wastes from out-of-state sources in Title I, while Title II limits Governors' power to restrict waste flow by authorizing existing flow control agreements that may include out-of-state trash. The Senators observed that many individual state provisions had to be added to the flow control title because of the many unique and creative ways that states and localities had solved their individual flow control needs, and so there are no standard models. They recommend adoption of a "more generic fix" based on the bipartisan compromise legislation that passed the House last year.

COST

Federal Government

On April 11, 1995, the Director of the CBO sent a letter to the committee estimating the bill, as ordered reported by the Committee on Environment and Public Works, would cost \$2.6 million for Fiscal Years 1996 through 2000, and increase outlays by \$2.4 million during this period. The CBO determined that the bill would not affect direct spending or receipts, and that pay-as-you-go procedures would not apply to the bill.

State and Local Governments

In addition, the CBO determined that passage of the legislation would have various effects on state and local governments. Title I, by allowing state and local governments to restrict MSW, would increase the cost of waste disposal services provided by local governments. As a result, costs would increase "by at least \$10 million annually for several

years, largely for communities in the State of New York." Title II would benefit local governments that have imposed flow control restrictions — which are being invalidated by the courts — by allowing the local governments to maintain their income from waste disposal. Finally, Title III is estimated to result in lowering future operating costs of certain public and private municipal landfills in Alaska and parts of the western United States by \$7 million to \$26 million annually.

POSSIBLE AMENDMENTS

Baucus. To increase authority granted to states and political subdivisions to reject imports of out-of-state MSW.

Coats. To authorize states to disapprove construction of any new municipal waste disposal facility in the absence of a showing of the "need" for disposal capacity, as defined under state law.

Coats. To lower the thresholds to begin "ratcheting down" imports from large exporting states.

Cohen/Snowe. Flow control.

D'Amato. To increase authority to export interstate waste.

Faircloth. Flow control.

Graham. Flow control re. state-mandated disposal services.

Heflin. To change duration of flow control authority.

Kempthorne. Interstate waste technical changes.

Kempthorne. Groundwater monitoring technical changes.

Kyl. To terminate flow control authority once debts incurred as of May 15, 1994, have been repaid; and other limiting provisions to Title II of the bill.

Lautenberg. Two amendments on flow control.

McConnell. Interstate waste: state and regional solid waste plans may increase authority to ban imports.

Moynihan. Flow control technical changes.

Santorum. To expand flow control authority.

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